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11 *Attorneys for Defendant Michael Lacey*

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF ARIZONA

14 United States of America,

15 Plaintiff,

16 vs.

17 Michael Lacey, *et al.*,

18 Defendants.
19
20
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NO. CR-18-00422-PHX-SPL (BSB)

DEFENDANTS' JOINT
MOTION FOR DESIGNATION OF 39
DOCUMENTS SUBJECT TO THIS
COURT'S DESTRUCTION ORDER TO BE
PRESERVED AS PART OF THE *IN*
CAMERA RECORD IN THIS
PROSECUTION

22
23 Defendants, by and through their undersigned attorneys, hereby move for an order
24 designating the 39 documents subject to destruction under this Court's January 28, 2019 Sealed
25 Order to be preserved as part of the *in camera* record in this prosecution. To the extent that those
26 documents are no longer in the Court's possession, Defendants respectfully request that this
27 Court order the government to provide them to the Court under seal for the Court's *in camera*
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1 record in this case. The Court's preservation of those 39 documents as part of the *in*
2 *camera* record in this case will ensure that they are available as part of the record on appeal and
3 for the parties in this case, to the extent that issues arise that require disclosure of them at a later
4 date.

5 It is expected that excludable delay under 18 U.S.C. § 3161(h)(1)(D) will occur as
6 a result of this motion or an order based thereon.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 On October 17, 2018, the government filed its Motion to Compel Destruction of
9 Inadvertently Disclosed Documents pertaining to 39 documents that the government claimed
10 that it had inadvertently produced to Defendants on July 2, 2018. (Doc. 343 (*filed under seal*).)
11 In connection with its motion, the government submitted 22 of those documents to this Court
12 for *in camera* review. (*See id.* at 10 n.6.) Defendants vehemently opposed the motion on the
13 ground that the documents at issue contained exculpatory material under *Brady* and *Giglio*, that
14 the Defendants' right to present a defense trumped the government's work-product claim, that
15 the government waived its work-product claim, and that the government had failed to prove that
16 it did not waive any claimed privileges by disclosing the substance of the documents to third
17 parties. (Doc. 405 (*filed under seal*).)

18 On January 28, 2019, this Court issued an Order compelling Defendants to destroy 39
19 documents that the government claimed that it inadvertently produced to them. (Doc. 449-1
20 (*filed under seal*).)

21 Defendants are in the process of destroying the 39 documents. Nonetheless, Defendants
22 respectfully request that this Court issue an order preserving all 39 documents as part of the *in*
23 *camera* docket associated with this case. When a district court reviews documents that
24 purportedly contain *Brady* or *Giglio* material during the course of an *in camera* review, those
25 documents must be preserved for the appellate court to make a determination as to whether the
26 district court's ruling was appropriate. Because documents submitted by the government for *in*
27 *camera* review are not in the possession of a defendant, the appellate court must have access to
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the government's *in camera* submissions in connection with its review of a district court's ruling. *See United States v. Strifler*, 851 F.2d 1197, 1201-02 (9th Cir. 1988). The district court's preservation of all *in camera* submissions preserves the record for the appellate court. In addition to preservation of the record, this Court should maintain a copy of the 39 documents to ensure that they are available, should their disclosure be ordered at a later time.

CONCLUSION

In light of the foregoing, Defendants respectfully request an order from this Court directing the government to submit a complete set of the 39 documents subject to destruction to be preserved by this Court as part of the record in this case.

RESPECTFULLY SUBMITTED this 6th day of February, 2019,

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